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ent pieces of land ; they cannot be brought into a state of legal coincidence ; and even if this were not so, in a case where it is so manifestly their right and for their interest to preserve their mortgage title to P intact, for the security of perhaps the whole, at least of a part, of the price paid therefor, a court of equity will not infer an intent to merge and lose it in the equity in R and S taken for another debt: *Lockwood v. Sturdevant*, 6 Conn. 373 ; *Mallory v. Hitchcock*, 29 Id. 127 ; *Hunt v. Hunt*, 14 Pick. 383 ; *Savage v. Hall*, 12 Gray 364 ; *Stanton v. Thompson*, 49 N. H. 277.

It is found in 1877 that in 1872 the joint value of R and S was \$100,000 ; that is about \$18,000 more than the aggregate amount of the debt due to the Delaware and Hudson Canal Company, and of the sums paid to Barnum for his mortgage upon P, R and S ; and Bonnell insists that, therefore, they have no equitable lien upon P.

He was a subsequent mortgagee of R and S ; he was made a respondent in the petition for foreclosure ; he had his day in court and opportunity for redemption ; he declined to avail himself of it ; presumably he did not regard it as a valuable privilege ; he preferred to allow them to take the chance of obtaining their debt from the property. It is also found that the appraised value of R and S in 1877 is only \$40,000. He is not, therefore, now in a position, as between himself and them, to force the mortgage resting upon P and R wholly upon R.

There is no error in the decree complained of.

Affirmed.

Supreme Court of Indiana.

GEORGE W. FRY v. THE STATE OF INDIANA.

The legislative authority of a state is the right to exercise supreme and sovereign power, subject to no restrictions except those of the state and federal constitutions, and the laws and treaties made thereunder.

A statute cannot be unconstitutional as impairing the obligation of any contract made after its passage.

A statute prohibiting the sale of railroad tickets by brokers or by any person, except by the regular agents of the railroads, or by a *bona fide* purchaser of an unused ticket or portion of a ticket, is not unconstitutional as granting an exclusive privilege or immunity. Such a statute is within the legitimate sphere of police regulations.

Nor is such a statute a regulation of commerce within the meaning of the federal constitution.

THIS was an indictment against the appellant, charging in substance, that the appellant, on the 9th day of January 1879, at and in the county of Marion, did then and there unlawfully barter and sell, for a valuable consideration, to wit, the sum of ten dollars, to some person whose name is to the grand jurors unknown, a railroad ticket, the description and date of which said ticket is to the grand jurors unknown, for the reason that said ticket is lost and cannot be found, entitling and evidencing the right of the holder thereof, to wit, the person whose name is to the grand jurors unknown as aforesaid, to travel and be transported over some railroad, the name and style of which said railroad is to the grand jurors unknown, running from the city of Indianapolis, in the county of Marion, and state of Indiana, to the city of St. Louis, in the state of Missouri. The grand jurors aforesaid, upon their oath aforesaid, do further present that, upon the said 9th day of January, A. D. 1879, at the time and place the said Fry sold said ticket as aforesaid to said person, whose name is to the grand jurors unknown as aforesaid, to wit, at the county of Marion and state aforesaid, said Fry was not then and there the agent of the railroad, whose name and style are to the grand jurors unknown as aforesaid, and said Fry was not then and there authorized to sell tickets or other certificates, evidencing the right of the holder thereof to travel and be transported upon said railroad, and he did not then and there have a certificate provided him by said railroad, setting forth his authority as agent of said railroad, signed by the managing officer of such railroad, and duly attested by its corporate seal; that said George W. Fry had not purchased the said ticket, evidencing the right of the holder thereof to travel and be transported by said railroad from the said city of Indianapolis, in the county of Marion, and state of Indiana, to the said city of St. Louis, in said state of Missouri, from an agent of said railroad authorized to sell tickets or other certificates, evidencing the right of the holder thereof to travel and be transported by said railroad, and provided with a certificate setting forth his authority as such agent to make such sales, signed by the managing officer of said railroad, and duly attested by the corporate seal of said railroad, with a *bona fide* intention of travelling on the same. Wherefore, the grand jurors aforesaid, upon their oath aforesaid, do further present and charge, that said sale of said ticket by said George W. Fry to said person, whose name is to the grand jurors aforesaid

unknown as aforesaid, and in manner and form aforesaid, was and is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Indiana."

The appellant moved the court quash said indictment, which motion was overruled and to this ruling he excepted.

The appellant's plea was not guilty.

The issues joined were tried by the court without a jury, upon an agreed statement of facts; and a finding was made by the court, that the appellant was guilty, as charged in the indictment. The appellant's motion for a new trial was overruled by the court, and to this decision he excepted; and judgment was rendered against him by the court on its finding, from which judgment this appeal was now prosecuted.

The principal parts of the statute were as follows :

Sec. 1. That it shall not be lawful from and after the taking effect of this act, for any officer or agent of any railroad company, steamboat, or other public conveyance of passengers for hire or reward, or for the operator or operators, manager or managers (or his or their agent or agents), of any such railroad, steamboat or other public conveyance, to issue or sell any pass, ticket, or coupon of a ticket, or certificate evidencing the holder's right to travel over or be transported in or upon such railroad, steamboat or other public conveyance, subject to any condition contained in or endorsed upon or appended to such pass, ticket, coupon or certificate, whereby the liability of such carrier shall be abridged or limited, or whereby the rights of the holder of such pass, ticket, coupon or certificate shall be decreased or abridged, unless such condition shall be printed in nonpareil type, or in type or characters as large or larger than nonpareil type. Any such officer, agent, operator or manager, or the agent of such operator or manager, who shall violate the provisions of this section of the act, shall, upon conviction thereof, be fined not less than \$10 nor more than \$100 for each pass, ticket or coupon which he shall issue or sell contrary to the provisions of this section. * * *

[Sec. 2. Provides that every railroad or other public conveyance for the transportation of passengers for hire or reward, shall provide each agent who may be authorized to sell tickets, etc., with a certificate setting forth his authority, etc.]

Sec. 3. It shall be the duty of the owner or owners, operator or operators of every railroad, steamboat or other public conveyance of passengers for hire or reward, to provide at each agency for the sale of tickets, for the redemption of the whole of any ticket or any part or parts, or coupon of any ticket which they may have sold and which the purchaser, for any reason, shall not have used, at the following rates, namely : where the whole ticket is presented for redemption, at the full price paid for the same, and when a part or coupon of the ticket only is presented for redemption, then the redemption shall be at a rate which shall be equal to the difference between the price paid for the whole and the cost of a ticket between the points for

which the part of said ticket was actually used; and the sale by any person of the unused portion of any ticket, otherwise than by the presentation of the same for redemption as aforesaid, shall be deemed to be a misdemeanor, and shall be punished by a fine of not less than \$5 nor more than \$50: Provided, however, that this act shall not prohibit any person who shall have purchased a ticket from an agent, authorized, as is by this act provided, with the *bona fide* intention of travelling on the same, from selling such ticket or any part or coupon thereof, to any other person, to be used in good faith by such person in travelling over such railroad or in or upon such steamboat or other public conveyance.

[Sec. 4. Makes violation of the statute by any owner, etc., of a public conveyance a misdemeanor.]

Sec. 5. It shall not be lawful for any person not possessed of the authority mentioned in the second section of this act, and not evidenced as therein provided for, to sell, barter or transfer, within this state, for any consideration whatever, the whole or any part of any ticket or tickets, passes, or other evidences of the holder's title to travel on or be transported in or over any railroad, steamboat or other public conveyance, whether the same be situated, owned or operated within or without this state, except as provided for in section three.

[Sec. 6. Makes it the duty of ticket agents to post their certificates of authority in a conspicuous place, etc.]

Sec. 7. Any person who shall violate any provisions of either the fifth or sixth sections of this act shall, upon conviction thereof, be fined not less than \$10 nor more than \$100.

The opinion of the court was delivered by

Howk, C. J.—Errors have been assigned by the appellant, in this court, which call in question the following decisions of the court below:

1. The overruling of his motion to quash the indictment.
2. The overruling of his motion for a new trial.

In their argument of this cause, in this court, the appellant's learned counsel have expressly waived all "technical objections" to the indictment. They do not claim, "that the grand jury had no legal authority to inquire into the offence charged;" nor do they claim, "that the indictment contains any matter which, if true, would constitute a legal justification of the offence charged, or other legal bar to the prosecution." But the appellant's motion was evidently founded upon the second statutory cause for quashing an indictment, namely, that the facts stated do not constitute a public offence." 2. R. S. 1876, p. 399, sect. 101.

The facts stated in the indictment, in this case, show very clearly, that it was intended to charge the appellant, therein and thereby, with a violation of the provisions of the fifth section of an act, enti-

tled "An act regulating the issuing and taking up of tickets and coupons of tickets by common carriers, and defining the rights of holders thereof, and other matters in relation thereto," approved March 9th 1875. 1 R. S. 1876, pp. 259 and 260.

It is earnestly insisted by the appellant's counsel that this entire statute is unconstitutional and void, upon the following grounds:—

1. Because it is in violation of section 8, of the first article of the Constitution of the United States, which provides:

"The Congress shall have power * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

2. Because "it is also an infraction of at least two provisions of the Constitution of Indiana: 1st. It impairs the obligations of contracts; * * * 2d. It undertakes to grant to carriers of passengers privileges and immunities which it does not extend to other citizens upon the same terms, or upon any terms whatever."

We will consider the appellant's objections to the constitutionality and validity of the statute, in the inverse of the order in which his attorneys have presented them.

It is the settled doctrine of the decisions of this court, that "the legislative authority of this state is the right to exercise supreme and sovereign power, subject to no restrictions except those imposed by our own constitution, by the federal constitution, and by the laws and treaties made under it. This is the power under which the legislature passes all laws:" *Beauchamp v. The State*, 6 Blackf. 299; *Doe v. Douglass*, 8 Id. 10; *The La Fayette, &c., Railroad Co., v. Geiger*, 34 Ind. 185. It must appear very clearly that the legislation is in conflict with some express provision of the constitution, or the statute will be upheld. It is claimed by the appellant that the statute above quoted is in conflict with that provision of the Bill of Rights, which declares that no law shall ever be passed "impairing the obligation of contracts." We fail to see this matter in the light in which the appellant's counsel have presented it. But if it could be said that the statute did impair the obligation of contracts existing at the time of its passage, the effect would be, as it seems to us, that as to such existing contracts the statute would be inoperative and of no effect, while it might be and would be, if no other objection existed, constitutional and valid as to all future contracts. The transaction on which the indictment in this case was predicated, occurred nearly

four years, as alleged, after the passage of the act in question ; and it cannot be said, we think, that the statute impaired the obligation of any contract in connection with that transaction. This objection to the constitutionality of the statute was not well taken, and cannot be sustained in any view of the question.

The second objection, urged by the appellants, to the validity of the statute, under our state constitution, is that it is in conflict with that section of the Bill of Rights, which declares that "the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens." In discussing this objection, the appellant's counsel say of the statute : "It grants to any common carrier the exclusive right to purchase the unused portion of its tickets, and does not, under any circumstances, permit any other person to engage in the purchase thereof, and extends to said carriers immunity from all competition in the purchase and sale of such tickets. It simply is enabling a monopoly to be more exclusive." We do not think that this is a fair statement of the purport and effect of the statute. It does not grant a right to, but imposes a duty upon, the common carrier of passengers to purchase the unused portion of its tickets. It does not prevent but expressly allows the sale by the *bona fide* holder of such unused portions of tickets to any other person, to be used by such person in good faith, in traveling therewith. It prohibits a general brokerage business in the buying and selling of such unused portions of tickets, except under well-defined restrictions. The provisions of the statute, in this regard, are manifestly police regulations, and whatever may be said either for or against the justice or the wisdom of these regulations, it is certain, we think, that, in their enactment, the legislature did not exceed their legitimate power under our state constitution. It is neither the province nor the duty of the courts to call in question either the policy or wisdom of any act of legislation. The learned attorneys of the state have stated, clearly and explicitly, in their argument of this cause, some of the motives which may possibly have induced the General Assembly to enact the statute now under consideration. Without endorsing in anywise this statement, it may not be improper for us to set out, in this connection, a statement of the views of the representatives of the state, in this prosecution, as to the probable reason for the enactment of this statute. Counsel say, 'If the legislature believed that spurious

tickets were being put upon the market by means of brokers, of such kind as to make detection difficult, and in such numbers as to amount to a serious injury to the people or the railroad companies, or if they believed that their officers furnished a market for stolen tickets, and aided employers of the railroads or other persons in carrying on a nefarious business, and a business dangerous both to the railroads and their patrons, and if they further believed that the brokers were of little or no advantage to anybody, then they might well enact such a statute as this as the best means of correcting an existing evil. And if it seemed wiser to the legislature to strike directly at the brokers, and make their business unlawful, than to attempt to punish those who stole genuine or issued spurious tickets, they had the same right to take that course that they have to make a man a criminal who enters a house for gaming purposes, and thus assists gamblers, who are also criminals, in preying upon society."

In our opinion, the statute under consideration is not open to the second objection urged by the appellant's counsel against its validity, under the provisions of our state constitution.

We pass now to the consideration of the main ground of objection, presented by the appellant's attorneys, to the constitutionality and validity of the statute above quoted, namely, that it is in violation of section 8th of the first article of the constitution of the United States, which provides:—

"The Congress shall have power * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

In discussing this second objection to the statute under consideration, the appellant's counsel lay down the following propositions, with the purpose of establishing the same, in and by their argument:—

"1. That the word 'commerce,' as used in this section of the constitution, includes passenger travel, and hence any regulation of passenger travel is a regulation of commerce.

"2. That the power vested in Congress to regulate commerce, as applied to interstate passenger travel, is exclusive, and that the states have no power whatever to legislate upon this subject, even in the absence of legislation upon the part of Congress.

"3. That, conceding that the right to regulate commerce exists in the states, until Congress has exercised its powers in that behalf,

Congress has so far exercised that power as to preclude any action on the part of the states.

“4. That the statute does attempt to regulate passenger travel among the states, and hence is void ; and

“5. That such statute is not a legitimate exercise of the police power, which, confessedly resides in the several states.”

We need not, in this opinion, consider or comment upon any of these propositions of the appellant's counsel, except the fourth and fifth. We do not think, that the first three of the five propositions, laid down by counsel, are in any manner involved in the case now before us. We recognise the constitution of the United States, and the acts of Congress pursuant thereto, as the supreme law of the land.

It may be conceded that the word commerce, as used in section 8, above quoted, of the first article of the federal constitution, includes within its scope and meaning interstate passenger travel; and that the power vested in Congress to regulate commerce, as applied to such travel, is so far exclusive in its character, as that the states may not, by any act of legislation, impose burdens upon either the carrier or the passenger, which would obstruct or hinder the free course of travel. Such we understand to be the purport and effect of the decisions of the Supreme Court of the United States, in construing the section above quoted. *Gibbons v. Ogden*, 9 Wheat. 1; *Passenger Cases*, 7 How. 283; *Henderson v. The Mayor, &c.*, 92 U. S. 259; *Chy Lung v. Freeman*, 92 Id. 275; *Railroad Co. v. Hazen*, 95 Id. 465. In three cases, the doctrine is firmly maintained, that Congress has the exclusive power to regulate commerce, including interstate passenger travel; and in the case last cited, the court define the term commerce, and what is meant by a regulation of commerce, as follows: “Transportation is essential to commerce, or rather it is commerce itself; and every obstacle to it, or burden laid upon it, by legislative authority, is regulation.”

From this definition of the term regulation, as applied to commerce, it would seem that a state statute, which placed no obstacle in the way of, and imposed no burden upon, interstate passenger travel, could not be said to “invade the domain of the national government,” and could not, for that reason, be held to be unconstitutional and void. It cannot be said, we think, that the statute of this state, above quoted, in any manner impedes, obstructs, or

casts any burden upon, the free course of commerce, in so far as interstate passenger travel is concerned. The statute imposes certain prescribed duties upon common carriers of passengers and their agents, but the discharge of these duties does not and cannot, as it seems to us, obstruct or hinder, or cast any burden upon, the commerce of the country or interstate passenger travel. The act absolutely prohibits, and makes unlawful, the sale, barter or transfer, within this state, by any person not authorized thereunto as provided in said act, for any consideration whatever, of the whole or any part of any ticket or tickets, passes, or other evidences of the holder's right to travel, &c. That far forth, the provisions of the statute must be regarded, as we have already said, as police regulations, the evident object and purpose of which were to prevent and prohibit a general brokerage business in the purchase and sale of such tickets, &c., and the unused portions thereof. We fail to see, that these regulations are obstacles to, or burdens upon, interstate commerce, in any sense of that term.

In the case of *Railroad Co. v. Hazen*, *supra*, the Supreme Court of the United States says, "We admit that the deposit in Congress of the power to regulate foreign commerce, and commerce among the states, was not a surrender of that which may properly be denominated police power. What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health and safety. * * * * * It may also be admitted, that the police power of a state justifies the adoption of precautionary measures against social evils. Under it a state may legislate to prevent the spread of crime, or pauperism, or disturbance of the peace." If, in the exercise of its police power, a state enacts certain regulations, which are neither obstacles to, nor burdens upon, interstate commerce, it cannot be said, we think, that such legislation invades the domain of legislation which belongs exclusively to the Congress of the United States; namely, because it relates to subjects which, to some extent, are connected with interstate commerce. For, as we understand the decision of the Supreme Court of the United States, in the case last cited, the state legislatures are prohibited, by said section 8, of the first article, of the federal constitution, from enacting such regulations only, in relation to interstate commerce, as would be either obstacles to, or burdens upon, such commerce. If this view of the matter under consideration is correct,—and we

think it is,—it follows very clearly that the statute of this state, above quoted, is not in violation of section 8, article 1, of the constitution of the United States, and is not, therefore, unconstitutional and void.

In the same section, of the same article, of the Constitution of the United States, it is also provided that “The Congress shall have power * * * to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” The power thus given was early exercised, and since has been continuously exercised, by Congress in the enactment from time to time of suitable laws for the purposes indicated. The power thus exercised is exclusive, in its origin and nature, as the power to regulate foreign or interstate commerce. In *Ex parte Robinson*, 2 Bissell 309, it was held by DAVIS, J., then a learned and eminent justice of the U. S. Supreme Court, presiding in the U. S. Circuit Court, in this district, as follows: “The property in inventions exists by virtue of the laws of Congress, and no state has a right to interfere with its enjoyment, or to annex conditions to the grant. If the patentee complies with the law of Congress on the subject, he has a right to go into the open market anywhere within the United States and sell his property.” This court adopted and followed the doctrine of the case cited, in *Helm v. The First National Bank of Huntington*, 43 Ind. 167, and in *The Grover & Baker Sewing Machine Co. v. Butler*, 53 Id. 454.

In the recent case of *Patterson v. Kentucky*, decided by the Supreme Court of the United States, in February 1879, the exclusive power of Congress to legislate, on the subject of property in inventions, was claimed by the plaintiff in error, and that a statute of Kentucky, which imposed a fine on any one who should sell for certain purposes a certain patented article, possessed of certain qualities, was unconstitutional and void, because it was inconsistent with the federal constitution, and the laws of Congress pursuant thereto. In an able and exhaustive opinion, Mr. Justice HARLAN lays down the doctrine, in that case, that “obviously” the right of a patentee, under the constitution and laws of the United States, “is not granted or secured, without reference to the general powers which the several states of the Union unquestionably possess, in reference to their purely domestic affairs, whether of internal

commerce or of police." The learned judge quotes with approval and, to some extent, grounds his opinion upon, the following excerpts from Mr. Cooley's excellent Treatise on Constitutional Limitations, to wit: "In the American constitutional system, the power to establish the ordinary regulations of police has been left with the individual states and cannot be assumed by the national government. * * * If the power extends only to a just regulation of rights with a view to the due protection and enjoyment of all, and does not deprive any one of that which is justly and properly his own, it is obvious that its possession by the state, and its exercise for the regulation of the property and actions of its citizens, cannot well constitute an invasion of national jurisdiction, or afford a basis for an appeal to the protection of the national authorities." Page 574. In the case cited, it was held by the Supreme Court of the United States, that the Kentucky statute was a police regulation within the power of the state, and was not in violation of the constitution and laws of the United States. We have cited the case, in this connection, not because it is directly in point, but because it contains the latest expression we have seen, of the views of the Supreme Court of the United States upon subjects which are, at least, closely allied to the questions involved in this case. Of course, in so far as the doctrine of the case cited is in conflict with the decisions of this court, in the cases above cited or any other cases, in our reports, the latter cases must be and are overruled.

In the case at bar, our conclusion is that the statute of this state, above quoted, is not in conflict with the constitution or laws of the United States, but was a legitimate exercise by the state legislature of the police powers of the state. Therefore, we hold that no error was committed by the court below, in overruling the appellant's motion to quash the indictment.

No point is presented for decision, by the appellant's counsel in argument, arising under the alleged error of the court, in overruling the appellant's motion for a new trial. That error, even if it existed, must therefore be regarded as waived.

The judgment is affirmed, at the appellant's costs.